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634 such public property as forests, and controls the civil police force. The administration of justice is divided between the Magistrate, the High Court, and the Garrison Commander. The position of the latter is anomalous since his power is derived from the application of Martial Law to the crimes of banditry and high treason. This is a temporary measure for the pacification of the country, theoretically terminable when order has been completely restored, but likely to last in practice for many years yet. The reason is not so much that the country is disturbed, for banditry has been stamped out in western Yunnan, but that this power derived from martial law is in fact a legalisation of the usurped power of the military authorities originating in the years of turmoil which followed the revolution.

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Martial Law applies to banditry, which is defined as robbery under arms, with or without murder; and high treason, which means in practice armed opposition to the government, conspiring against the government, or—up till 1937—assisting or belonging to the Chinese Communist Party. This last offence is only of academic interest in the Ta Li region, which was never affected by the Communist movement, and since the agreement between the Communist rebels and the Central Government upon the outbreak of war with Japan, it is no longer a crime to be a Communist. Criminal offences not included in the scope of Martial Law, such as murder without intent to rob, robbery without arms, seduction of an unmarried girl, forgery and embezzlement are tried by the Magistrate in his court. Sentence of death has to be confirmed by the Governor of the Province and is then carried out by the military authorities.

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The Chinese reformed civil code is in force in Yunnan, but in out of the way areas such as Ta Li, where the provisions of the new code are usually very little known either to the public or to the officials, the actual practice of the

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courts does not always conform to the enlightened ideas of the legislators. It may well be that an older spirit of compromise on the one hand, and of severity towards socially condemned crimes on the other, still pervades the law as it is applied from day to day. This is illustrated by the kind of sentence imposed for murders of different types. The murder of a near relative, father, mother, brother or sister, a crime abhorred by the Chinese, is punished with death. But the murder of one who is not related to the criminal, even though the crime may have very little palliating or extenuating circumstances, is often only punished by a sentence of five or six years' imprisonment. The prisons of Yunnan are for the most part well below the standard which the government desires to see enforced, and a sentence of some years in prison is therefore not so light as it may seem.

Civil disputes and lawsuits not involving criminal offences come under the jurisdiction of the Branch High Court situated at Ta Li. This type of jurisdiction is of course part of the reforms instituted by the Republic, and the law applied is the new reformed civil code. The Branch High Court has jurisdiction over a much wider area than the *Hsien* of Ta Li itself, for it covers all civil cases of importance brought in the *Hsien* between Pao Shan in the west, Li Chiang in the north, Meng Hua southwards, and Ch'u Hsiung to the east. These places, the nearest to have Branch High Courts themselves, are each about a hundred miles from Ta Li. A civil dispute arising in Erh Yuan or Chien Ch'uan has thus to be brought before the Ta Li Branch High Court, if the parties cannot compose their differences with the aid of arbitrators. The Min Chia, like the Chinese, are not at all a litigious people, always preferring to settle their disputes by arbitration if possible, and only resorting to the courts in the last instance. The cost of litigation in the civil courts, though not high by European standards, is a further deterrent. The ad-

124 judgment. In any case, he had had no particularly bad experiences during all the years of his contact with the Fantzu, although this happens very often to Chinese because they find it hard to suppress a certain conceit toward peoples of other cultures.

888 My interpreter described the Mewu-Fantzu as generally sincere,
181 courteous and hospitable. They do not get angry very easily; they
577 are faithful in friendship and are very willing to help each other, but being a Chinese, my interpreter was very scornful of their lack of piety toward their parents. It can happen that an adult son refuses to take his parents into his tent, which is why one sometimes sees old people begging at the temples or burial places. Even wealthy people sometimes treat their parents badly. The Fantzu do not often lie, nor do they incline to boasting; on the contrary, they try to belittle their property, and they put little value on "face." Even wealthy people wear dirty clothes, and sometimes even beg. They do not forget insults. In business the Fantzu are less reliable than the Chinese. They often do not keep their promises, and sometimes they forget to pay.

683 The most common crimes are: theft, plunder, the infliction of
754 bodily injuries, and - in the opinion of the Fantzu themselves - black magic.

671 Common law, not written down, is the law of the Fantzu. The
692 t'ou-mu, to whom all the more serious legal cases are presented, decides according to his judgment, usually with the approval of the heads of the ts'aowa groups.

685 According to my interpreter, the Fantzu do not have a tendency to theft, at any rate they do not rob each other. /80/ If they accept a stranger in their midst, (1) they do not steal from him or rob

1. as in the case of the author who was recommended to the Mewu Lamasery by the Labrang Lamasery.

him, especially not when he is a guest in a tent or house.

[123] Inconsistent though it seemed, my interpreter was always very
685 careful about guarding my belongings which were, as far as possible, stored in the tent in such a way that they could not be easily got at from the outside. An American missionary assured me that this precaution was justified, for he had lived a great deal among the Fantzu and had often been robbed. Nevertheless, my interpreter's insistence that the Fantzu do not tend to steal is only an apparent contradiction. Wherever primitive ideas of justice prevail, stealing from strangers is probably judged on a different moral basis than

tribe. There /83/ are also fixed rules about the use of pastures during the various seasons (first and second summer pasture and winter pasture). The tent communities do not quarrel about pasture-lands. Violating regulations with regard to pastureland is punished by the t'ou-mu with a fine which must be paid in butter. For every yak that breaks out beyond the boundaries of the pasture its owner must pay two chin of butter. 421 233

There seems to be no particular hunting rights, but the t'ou-mu has the authority to forbid hunting under certain circumstances. Thus, for example, during my stay among the Mewu-Fantzu, the shooting of groundhogs was forbidden for definite reasons. In such cases hunting rights are not granted even for money. If a person is caught violating the rules, he is first beaten and then required to pay a fine. 421 224

There are no sales transactions involving legal contracts. Stock is sold by the head. The Fantzu are very adroit traders; there are usually no disputes in business deals. 432

Judicial authority is only theoretically in the hands of the Chinese district administration; in practice it is left to the Fantzu themselves. The Chinese court does not prosecute punishable actions of the Fantzu. Even when a Fantzu has wronged a Chinese, he is not prosecuted directly by a Chinese court, but at the proposal of the district official by the t'ou-mu who, as we have said above, is the superior judge. It is only when very influential Chinese have been robbed that the Chinese authorities send out a military posse. The Chinese for their part do not dare harm the Fantzu, for fear of their revenge. They are glad when the Fantzu leave them alone. Two years ago (1934) Chinese soldiers killed seven or eight Fantzu, whereupon the t'ou-mu immediately sent out his warriors to pursue the Chinese. However, there was no incident because a Mohammedan /84/ officer acted as mediator. A fine of $100 was demanded for each man slain. The incident shows that the Mohammedan played a neutral, respected role between Fantzu and Chinese. 692 563

The t'ou-mu can prosecute a crime only if it takes place within the territory of his tribe. If the criminal escapes into another territory, he can pursue him only as far as the border. 692

The councils of the ts'aowa groups enjoy about the same authority as the t'ou-mu. Their task is a little more arduous since in judicial cases and the pursuit of a criminal, they are appealed to first. The ts'aowa council, however, is required to ask the t'ou-mu for permission to pursue a criminal. As a rule t'ou-mu and ts'aowa work together in such cases.

Mewv

692 In legal disputes the t'ou-mu chooses a body of judges consisting of himself, the councils of the ts'aowa groups, the kuan-shih of the t'ou-mu or other older men who are known to be good speakers and fair in their judgment. The number of judges varies according to
695 the importance of the case. The choice of venue depends on the circumstances; usually the trial is held in a temple or a village of the sedentary Fantzu. Witnesses are examined, much as in a Chinese court. The parties must take the oath of telling the truth in front of a Buddha image. If the truth cannot be ascertained from witnesses, various methods of divine judgment are used. In less serious cases a box is produced in which there is a white stone and a black stone. The person who draws the white stone wins. In more serious cases one of two forms of divine judgment is used: the two parties must either touch a red-hot ax with their hands or they must dip their hands into boiling rape oil. The one whose hand is not burned is innocent. The boiling-oil test is most often used.

681 If an accused will not confess, /85/ he is tortured. There are nine different methods of torture: 1. a person is whipped on the back with a leather whip; 2. a person's hands are tied behind his back with a leather strap, whereupon he is suspended from a post by his hands; 3. both wrists are bound with a rope made of yak hair, whereupon eight men, four on either side pull the rope tight; 4. the body is stretched out at the four extremities and is suspended in the air; in this position the accused is lashed on the back with a whip; 5. back and legs are beaten with willow withes; 6. whipping with a leather whip. If after the sixth form of punishment the accused does not confess, he is acquitted and is rewarded with a horse. The third form of torture is the most dreaded. Three additional forms occur under certain circumstances: 7. the legs of the accused are tied together with a rope and he is dragged along the ground. The 8th and 9th methods of torture consist of whip lashes. The t'ou-mu orders the torture to take place after having consulted with the court. He can appoint anyone he likes to inflict the torture.

As we have said, there is no capital punishment, with the exception of blood revenge. There is also no punishment of imprisonment, but the t'ou-mu can imprison a criminal until the trial has taken place. Infractions of any kind are avenged by the payment of penalties in money, butter, sheep or yaks. If a convicted person cannot pay the penalty imposed upon him, the t'ou-mu has him taken into custody and soundly thrashed. The penalty which the condemned person cannot pay must be made

Mewu

good by the ts'aowa group, as we have already mentioned, and the 681
accused must gradually pay off his debt to the group. The most severe punishment is probably expulsion from the ts'aowa group, which makes a man homeless.

Witnesses are not tortured. They are not /86/ examined in pub- 685
lic but in a separate room, so that they cannot be seen by the accused and thus be exposed to his revenge.

The t'ou-mu also has jurisdiction over members of another tribe 682
whom he can punish. The punishment is not, however, always recognized by the tribe to whom the convicted person belongs. During my stay among the Mewu-Fantzu, for example, the t'ou-mu held a lama prisoner for stealing a gun. The lama belonged to the He-tso Lamasery outside Mewu territory. He had ordered the lama whipped. For this reason no male Mewu-Fantzu ventured into the region of He-tso, since he would have been in danger of being captured.

Disputes between inhabitants of various tents in the same tent 578
community are settled by the t'ou-mu or one of his kuan-shih; like- 721
wise disputes between various tent communities. In such cases violence is seldom resorted to. Disputes between the tent Fantzu and the sedentary Fantzu of the Mewu tribe are very rare. They, too, are settled by the t'ou-mu. On the other hand, there are often quarrels between Fantzu of different tribes, sometimes leading to war.

In former times wars were frequent. But the Mewu-Fantzu fought 701
their last war about 30 years ago, that is, during imperial times. 721
On the other hand, a war was fought just a few years ago, about 100 li to the southwest. It lasted three years and ended only when the ruling feudal lord of Labrang, the "Huang-szu-ling" seized control. If a state of war arises the Huang-szu-ling calls his subordinate t'ou-mu to war. This happened, for example, during my stay when the region between T'ao-chou and Ho-chou, to which the territory of the Mewu-Fantzu and the lamaseries of Labrang and He-tso belong, was endangered by the "long march" of Mao Tse-tung's Communist Army to Shensi. The t'ou-mu recruit soldiers. Every tent must furnish at least one soldier, /87/ sometimes as many as two or three. Each man must bring his own weapons, ammunition and horses, just as in ancient times in the wars of the nomadic peoples, such as the Ch'i-tan and the Mongols. Families who cannot furnish a soldier must give weapons and guns, ammunition and a horse for those who are too poor to furnish their own equipment. The t'ou-mu decides how dangerous the situation is and how many recruits are to be called out.